IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI`I

VINCENT KHOURY TYLOR and VINCENT SCOTT TYLOR, Plaintiffs, v. MARRIOTT INTERNATIONAL, INC., a Delaware Corporation, dba COURTYARD BY MARRIOTT WAIKIKI BEACH AND/OR COURTYARD WAIKIKI BEACH; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; AND DOES ASSOCIATIONS 1-10, Defendants.	Case No. CV 14-00069 JMS-RLP **DECLARATION OF GLENN T. MELCHINGER**

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I, Glenn T. Melchinger, do hereby state and declare as follows:

1. I am an attorney with the law firm of Alston Hunt Floyd & Ing, attorneys for Defendant Marriott International, Inc. ("Defendant" or "Marriott") in this action.

2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein. This declaration is made in support of **Defendant Marriott International, Inc.'s Memorandum**

in Opposition to *Plaintiffs' Motion to Defer or Deny Defendant's Motion for Partial Summary Judgment.*

3. On January 14, 2014, John McDowell sent an email to Plaintiffs' counsel that discussed the fact that re-pinning was not copyright infringement, and that re-pinning did not create a copy of the copyrighted image. Plaintiffs' counsel was aware of this communication because he attached the email string between him and Mr. McDowell in PDF format to an email to me along with his July 28, 2014 demand letter.

4. On April 21, 2014, I received from Plaintiffs' counsel and reviewed a copy of Plaintiff's settlement demand letter, and calculated that the amount of the demand had increased about 4.8 times what I understood the prior demand to have been.

5. I attended the Rule 26(f) conference on April 23, 2014 with Louise Ing, Mr. Street, and Mr. Anderson. During that conference at my office, Plaintiffs' counsel expressed a willingness to substitute the real party in interest for Marriott.

6. I attended the meeting on July 15, 2014 with Louise Ing, Mr. Street, and Mr. Anderson at my office. During that meeting, the parties discussed the background facts, the *Amazon.com* case (cited in the MPSJ), and Defendant's counsel provided to Plaintiffs' counsel the name of the employee

understood to have handled the Pinterest account. Plaintiffs informed the Hotel and Marriott that its April 2014 offer would not stay open much longer.

7. On July 28, 2014, I received and reviewed a copy of Plaintiff's settlement demand letter and noted that the amount of the demand had increased again almost 200% from the April 2014 demand. The July 28 letter stated many things, including:

a. "we are no longer willing to delay discovery which is apparently necessary to be able to have a meaningful settlement discussion."

b. Plaintiff set out eight areas of discovery it wished to complete in order to accept the premise that Marriott was "innocent" of copyright infringement. Those areas were:

i. Marriott's franchise agreement concerning online advertising, the use of social media websites for commercial advertising, limitations or controls on the use of Marriott's trade name and brands in advertising, and the linking of any online advertising or commercial web pages for franchisees to Marriott's commercial website or commercial websites for Marriott's brands;

ii. The use of advertising agencies by Marriott, including social media consultants, web designers or web developers to coordinate, review or approve of online marketing efforts or advertising by franchisees;

iii. Guidelines, directives, or services provided to franchisees by Marriott for the implementation or coordination of social media marketing by franchisees;

iv. Marriott's policies concerning its own social media marketing, search engine optimization, and online advertising;

v. Marriott's own policies concerning the hiring of professional photographers and models, and policies or directives provided to franchisees concerning their use of photographers and models;

vi. Metrics of sales results after Marriott implemented online advertising and then social media marketing campaigns for SEO purposes and brand exposure;

vii. Marriott's policies, training, information, guidelines, or directives provided to franchisees on licensing images for advertising purposes, including any communication regarding licenses or the lack of licenses for the use of images by Marriott or its franchisees on social media web pages; and,

viii. Marriott's history of respect, or lack of respect, for copyrights in its policies and procedures on social media advertising and any directives to employees or outside vendors concerning copyright issues as to the commercial use of images "found on the internet."

c. Plaintiffs stated that there was no purpose in having a settlement conference "until appropriate discovery can be taken and any issues concerning the purported Pinterest exemption can be fully briefed on summary judgment."

d. Plaintiffs stated that their offer would expire "on or before August 11, 2014, at which time we would like to proceed with scheduling initial disclosures and other discovery."

From this letter, we understood that Plaintiffs would initiate discovery, serve requests, and issue subpoenas, but none arrived until October 2, 2014—the Rule 24 request to Marriott.

8. From early August, Plaintiffs' counsel (Mr. Street) often stated in telephone conversations I had with him that he viewed this case as the

one to litigate in order to create the law and establish once and for all that this sort of social media usage violated the Copyright Act.

9. On July 29, 2013, Plaintiffs sent demand letters to Marriott, alleging copyright infringement on two other hotels carrying the Marriott brand name but unrelated to the franchisee of the Courtyard by Marriott Waikiki Beach: the Courtyard Marriot at Coconut Beach and Courtyard Kahului Maui Airport. Plaintiffs also sent copies of the demand letter to counsel for Marriott in this lawsuit. In response, counsel for Marriott in this lawsuit informed Plaintiffs that Marriott International simply did not run all the local properties and that many were franchised.

10. On August 14, 2014, counsel for the Hotel, Mr. McDowell, sent another settlement offer to Plaintiffs offering in the alternative (a) to settle the one copyright infringement claim not involving a re-pinning on Pinterest and to address claims relating to the alleged re-pinnings via motions for summary judgment, or (b) to work on a global resolution.

11. On August 14, 2014, Plaintiffs' counsel rejected the Hotel’s August 14, 2014 offer, stating:

> We will advise the Court that having finally received this settlement offer, we see no purpose in wasting the judge's time in an early settlement conference before discovery is completed and the parties have the opportunity to present these issues to the Court on motions for summary judgment on a fully developed record.

> Given the nature of this offer, we can only consider the last three months as some kind of a misguided delaying tactic.

12. On August 15, 2014, Marriott's counsel received a call from Mr. Street, who stated that he was going to start the discovery needed to litigate the issues "adequately." Plaintiffs' counsel stated also (as he had many times before) that he intended to and create law in this case, that he did not intend to attend the September 29 settlement conference, and that he would seek discovery on social media, on Marriott, on Marriott's guidance to the Hotel franchisee, and other issues.

13. On August 29, 2014, Marriott's counsel spoke again with Plaintiffs' counsel and sent Plaintiffs a proposed stipulated protective order as a prelude to discovery of confidential, proprietary or sensitive information. Plaintiffs' counsel never responded to the proposed SPO until 11:15 AM today, October 6, 2014. A true and correct copy of the SPO attachment and email cover is attached as Ex. "1" hereto.

14. On September 10, 2014, I spoke again with Mr. Street and orally conveyed another settlement counteroffer. Plaintiffs' counsel rejected the offer during the same call, and stated again that he needed discovery on the "marketing system" and the "value of Pinterest," and that he was interested in litigating this case. I suggested Plaintiffs' counsel review the SPO again.

15. On September 19, 2014, Marriott provided Plaintiffs with an advance copy of its Motion for Partial Summary Judgment ("MPSJ"), along with a counteroffer to resolve all the issues in the current lawsuit regarding the Courtyard Waikiki Beach Hotel, and informed them the MPSJ would be filed on September 22, 2014, if the parties could not settle by then.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of October, at Honolulu, Hawai`i.

/s/ Glenn T. Melchinger
GLENN T. MELCHINGER